BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GUY G., Claimant, vs. HARBOR REGIONAL CENTER, Service Agency.	OAH Case No. 2005110092

DECISION

This matter was heard by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Torrance, California, on March 8, 2006.

Claimant's mother and conservator, Rae G. (Mom)[1], appeared on behalf of Claimant.

Dolores Burlison, Manager of Rights Assurance, represented the Service Agency, Harbor Regional Center (HRC or Service Agency).

Evidence was received, the matter was argued, and the case was submitted for decision. The parties stipulated that this decision was due by March 29, 2006.

ISSUE

Is HRC required to vendor Claimant or his mother as a supported living agency to be able to provide supported living funds to purchase a portion of the services that Claimant currently receives as a resident of a non-vendored provider, specifically a quasi-independent living arrangement owned and operated by Casa de Amma (CDA)?

[1] Initials are used to protect the privacy of Claimant and his family.

FACTUAL FINDINGS

1. The issue presented was previously partially considered and decided by ALJ Mark Roohk on August 24, 2005. ALJ Ruiz takes judicial notice of ALJ Roohk's decision, which is attached hereto. ALJ Roohk's factual findings and legal conclusions are incorporated by reference as if fully set forth herein. ALJ Roohk's decision provides an excellent discussion regarding Claimant's history and the events leading to the present dispute.

Background information

2. However, a brief review of the factual background is necessary. Claimant is an approximately 24-year-old adult male who has cerebral palsy, mild mental retardation, and traumatic brain injury. Between 2002 and 2004, Mom requested assistance from HRC in finding a group home for Claimant. HRC was unable to locate a reasonable group home living arrangement for Claimant during this time. Thereafter, Claimant's name was removed from the HRC's "search list" for an available group home. That is, HRC was no longer searching for a group home for Claimant. When Mom was informed that her son's name had been removed from the "search" list, she began investigating other living arrangements for her son. Mom located CDA as a result, and she planned on placing Claimant at CDA. The California Department of Health Services licenses CDA. It was not until three weeks prior to Claimant's eventual placement at CDA, in July 2005, that HRC again offered to explore the possibility of placing Claimant in a group home. Having had no reasonable offer or assistance from HRC in a group home placement for her son in over two years, Mom was not unreasonable in deciding to place Claimant at CDA.

3. Many of the services provided by CDA to Claimant are the type of Supported Living Services (SLS) described in California Code of Regulations[2] (CCR), title 17, section 58614, including, but not limited to, helping Claimant prepare his own meals, maintain his apartment, find employment, manage his financial affairs, and participate in community life. It was established that the SLS services provided by CDA are excellent, do not inhibit Claimant's choice of service providers, and best fit Claimant's unique needs. (See Legal Conclusion 1.)

4. It was established that if Claimant were placed in a group home, it would be at a Level III home for which HRC would pay $2,220 per month. Claimant presently pays over $3000 per month to reside at CDA; that amount is for services, not rent.

[2] All further references to the California Code of Regulations are to title 17.

5. In sum, ALJ Roohk determined that CDA was not a regional center vendor, but that the services it provides to Claimant are substantially similar to SLS for which a consumer may be eligible to be their own vendor. The present dispute between the parties concerns how ALJ Roohk's Decision and Order should be interpreted. As such, the following is quoted directly from ALJ Roohk's Decision:

LEGAL CONCLUSIONS

Welfare and Institutions Code section 4648, subdivision (a), requires that a regional center conduct activities to secure "needed services and supports," in order to help a consumer achieve the stated objectives of his or her individual program plan (IPP). It is undisputed that one of the goals in Claimant's IPP is for him to become as independent as possible. This includes his place of residence, or in the words of the IPP, "to live in a home that fosters independence." (Exhibit E.) Therefore, HRC is generally responsible for helping Claimant find and fund services that are appropriate for meeting this goal.

However, the law places some limitations on HRC's options in this regard. Welfare and Institution Code section 4648, subdivision (a)(3), provides that a regional center may purchase services or supports for a consumer pursuant to vendorization or a contract. "Vendorization or contracting" is further defined as "the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service." The statute further limits regional center reimbursement to a "rate of payment for vendored or contracted services established by the department," and provides for the existence of a variety of regulations governing the vendorization process, including application to become a vendor. California Code of Regulations, title 17, section 54310, sets forth the application process. That process, which requires extensive disclosures and cooperation on the part of the applicant, is designed to help ensure that the services and supports being provided to regional center consumers comply with all applicable standards of quality and safety.

The vendorization requirements thus serve an important function in the scope of the Lanterman Act. In this case, Casa de Amma not only is not a regional center vendor, it has no interest in becoming a vendor. Because of this, HRC has refused to fund any part of the services and supports that Claimant has recently begun receiving as a resident of that facility. Claimant nevertheless requests that HRC fund at least a portion of those services and supports. Given that Claimant and his mother have attempted for several years to find suitable placement with very limited success, it is understandable that

they have chosen to proceed with Casa de Amma prior to receiving HRC approval. It is also understandable that Casa de Amma does not wish to become vendored because it does not wish to be bound by the rate of payment set by law. The difficulty with all of this is, although there is no evidence that Casa de Amma does not or cannot meet the requisite standards for quality and safety in its services, HRC has no way of knowing whether this is or will remain so. HRC does not have the information it normally would if the facility had submitted to vendorization, and so does not have the benefit of the safeguards that come with that information. It would not be good policy to make exceptions to the vendorization requirements simply because a family has waited a long time to find appropriate placement, and because a facility does not wish to be bound by a rate of payment; to do so would be to start down a path that would ultimately undermine certain requirements of the Lanterman Act and render them meaningless.

The question then is whether there is any legal authority to require or permit HRC to fund at least a portion of Casa de Amma's services. That being stated, exceptions to the aforementioned vendorization requirements do exist. One of these is set forth in Welfare and Institutions Code section 4648, subdivision (a)(4), which provides in pertinent part that, notwithstanding the vendorization requirements, a regional center may issue a voucher for services and supports to a consumer or his or her family, commonly referred to as "parent vouchers." A review of the regulations applicable to vouchers, specifically California Code of Regulations, title 17, section 54355, limits these "parent vouchers" to five types of services: respite, nursing care, transportation, day care, and diapers. None of these are applicable to Claimant. Accordingly, Claimant is not eligible to receive funding for Casa de Amma through the voucher system.

However, another regulation, California Code of Regulations, title 17, section 54314, provides in pertinent part that, while consumers cannot be vendored to provide services to themselves, one exception to that rule is if a consumer wishes to "serve as their own Supported Living Services vendors as specified in Title 17, Section 58616."

Section 58616 provides as follows:

(a) A consumer shall have the right to qualify for SLS vendorization and to serve as his/her own SLS vendor.

(b) No relative or conservator of a consumer shall serve as the SLS vendor for that consumer except when a determination has been made through the IPP process that:

(1) Unpaid family-based, or other natural supports for the consumer will not be supplanted;

(2) Such service is consistent with the consumer's IPP goals and objectives;

(3) The relative or conservator proposing to serve as the SLS vendor has no legal obligation to support the consumer;

(4) The consumer's preference is for that relative or conservator to serve as the SLS vendor; and

(5) The service will be at least as cost effective as any available alternative.

Based on the evidence presented, it appears that none of the five criteria listed above would disqualify Claimant—or Claimant's mother as his conservator—from qualifying to act as a vendor of Claimant's own SLS services. The real question is whether or not the services and supports provided by Casa de Amma qualify as SLS. HRC has characterized those services as "quasi-independent," in that, while Claimant lives in his own private apartment, he receives a great number of services and supports from Casa de Amma designed to help him achieve a higher degree of independence. **Thus, while the Casa de Amma services are not SLS per se, neither are they reflective of Independent Living Services (ILS); rather, they form a link between the two in that they assist in the consumer's transition from supported living to some degree of independence. <u>As such, the services are determined to be substantially similar to SLS</u> such that Section 58616 applies to Claimant, and accordingly he, or his mother as his conservator, may be eligible to serve as the vendor of those services.** (Emphasis added.)

Regarding the actual cost of services, Section 58617 provides in pertinent part that:

(a) Before SLS is provided to a consumer, the projected annual cost of the consumer's [Supported Living Arrangement], as determined through the consumer's IPP process, shall not exceed the total annual cost of regional center funded services and supports that would be provided if the consumer were served in an appropriate licensed residential facility, as identified through the IPP process, provided:

(1) The total annual cost of services and supports shall include all regional center costs for residential placement […], community-based day program, transportation, and other services and supports….

These requirements are very much in accord with Claimant's request, which asks that HRC pay not for the entire Casa de Amma program, but only

those costs that would otherwise exist if Claimant were placed in a Level III residential facility, including other necessary services such as independent living skills, socialization, and transportation. However, despite the best efforts of Claimant's mother to provide accurate calculations, there has not been an official determination of what those costs would actually be; for example, it is not clear from the evidence if a Level III residential facility is in fact the appropriate level of placement for Claimant, and the proffered dollar amount associated with the non-residential services is simply an estimate created by Claimant's mother. In addition, because the possibility of self-vendorization for SLS as a means of paying a portion of the Casa de Amma services is being raised for the first time in this decision, and therefore has not been addressed by the parties, it is necessary that, rather than simply issuing an order upholding or denying Claimant's request, the parties be permitted the opportunity to address this possibility in the context of the applicable regulations, particularly in the course of a new or amended IPP, to determine 1) whether in fact Claimant qualifies for self-vendorization, pursuant to Section 58616, and 2) if so, what the appropriate amount of funding required of HRC shall be.

ORDER

Within 60 days of the date of this decision, the parties shall meet and convene for an Individual Program Plan meeting, during which they shall address the following:

1. Whether Claimant, or his mother acting as Claimant's conservator, qualifies to serve as Claimant's vendor for Casa de Amma services, pursuant to California Code of Regulations, title 17, section 58616;

2. If so, what portion of those services shall be funded by HRC, pursuant to California Code of Regulations, title 17, section 58617.

Events after ALJ Roohk's decision

6. An Individual Program Plan meeting was not held within 60 days as ordered by ALJ Roohk. Instead, on September 27, 2005, HRC simply sent a Mom a letter. The HRC did not contest vendorization of Mom under CCR section 58616. Thus, it was established that Mom is so qualified.

7. a. Instead, the HRC contended that "even if you or [Claimant] were vendored to provide SLS, HRC is prohibited from purchasing SLS services for [Claimant] because he does not meet the basic living situation as defined in the regulations – namely, renting or owing his own home – that is required for a regional center to provide SLS to a consumer." HRC's letter also referenced CCR sections 58614, subdivision (a)(1), and 58601, subdivision (a)(3). Those sections, read

together, require that a consumer receiving SLS "own or rent" his principal place of residence. Claimant does not own or rent the CDA apartment where he lives.

b. Mom then requested a fair hearing to appeal HRC's proposed decision declining to purchase SLS services for Claimant.

LEGAL CONCLUSIONS AND DISCUSSION

1. HRC does not dispute that Claimant's Mom could be vendored as a supported living agency to whom it could provide SLS funds. Instead, HRC contends that it can not fund SLS for Claimant because Claimant does not own or rent his residence and/or because CDA is a government licensed facility. These two contentions are discussed below.

2. CCR section 58611 allows an exception to the "own or rent" requirement discussed in Factual Finding 7. Specifically, SLS services may be provided, even if Claimant's living arrangements are provided by the same entity that provides his SLS services (i.e. Claimant does not rent or own his residence), if the arrangement does not "inhibit the consumer's exercise of rights", the interests of the consumer are served better than the available alternative, and the consumer understands and approves the arrangement. In this case, it was established that the services provided by CDA are excellent and do not inhibit Claimant's exercise of rights, HRC has been unable to find a suitable group home for Claimant, and that CDA best fits Claimant's unique needs. Thus, it was established that Mom can be a vendor for SLS, even though Claimant does not own or rent his residence. (Factual Findings 2-3.)

3. a. At hearing, HRC also raised for the first time the contention that funding for SLS can not be paid to a government licensed entity, noting that the Department of Health Services licenses CDA. CCR section 58601, read together with section 58614, prohibits a government licensed facility from being the recipient of regional center funding for SLS. The purpose of this requirement appears to be designed to prevent the licensed entity from providing both living quarters and SLS services, so that the consumer can control the services without concern for his living arrangement. Therefore, HRC cannot directly pay CDA for SLS services that CDA provides to Claimant.

b. However, section 58616 allows Mom to serve as Claimant's SLS vendor. The obvious reason for this section is to allow a consumer to choose his own SLS provider in the situation where the desired provider is not an approved regional center vendor. Otherwise, there would be no reason to allow a consumer or relative to become a vendor, as payment could be made directly to an approved regional center vendor. If Mom was Claimant's vendor, the fact that CDA is a licensed entity would not be an impediment because Mom, not HRC, would pay CDA for the SLS it provides to Claimant. (Factual Findings 2-3, Legal Conclusion 1.)

4. Claimant is eligible to receive SLS. However, the amount must be cost-effective. (CCR §§ 58616 and 58617.) It was established that if Claimant were placed in a group home, it would be a Level III home for which the HRC would pay $2,220 per month. Claimant presently pays CDA more than that amount for SLS. (Factual Findings 4-5.)

5. HRC has previously been unable to locate a reasonable group home living arrangement for Claimant. In light of the above, it is fair and equitable, and in the interests of justice, to order HRC to fund SLS services in the sum which it would pay for a group home, and continue until such time as the HRC can offer a reasonable group home living arrangement to Claimant. Payments made to Mom, as Claimant's vendor for SLS, would not run afoul of the intent of the above discussed regulations. These payments would also serve as equitable reimbursements for expenses being incurred by Claimant and his family. (Factual Findings 1-7, Legal Conclusions 1-4.)

ORDER

WHEREFORE, Harbor Regional Center shall vendorize Claimant's mother, Ray G., in order that she is able to receive Supported Living Services funds, and HRC shall fund those services for Claimant at the rate of $2,220 per month, and HRC shall continue that funding until such time as it is able to offer Claimant a reasonable group living home placement.

Dated: _____

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Chris Ruiz
Administrative Law Judge
Office of Administrative Hearings